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Attorney General

March 9, 2004

VIA ELECTRONIC FILING AND UPS NEXT DAY AIR MAIL

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: **I/M/O NEW JERSEY BOARD OF PUBLIC UTILITIES
PETITION FOR DELEGATED AUTHORITY TO
IMPLEMENT WIRELESS LOCAL NUMBER PORTABILITY
CC DOCKET NO. 95-116**

Dear Secretary Dortch:

Enclosed, please find an original and one copy of the Reply Comments of the New Jersey Board of Public Utilities regarding the above-referenced matter. The same have been filed electronically at the Federal Communication Commission's website.

Please file-stamp the copy and return it to me in the enclosed envelope. Thank you for your attention in this matter.

Respectfully submitted,

PETER C. HARVEY
ATTORNEY GENERAL OF NEW JERSEY

By:


Bhaveeta Kapoor
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cc: Service List (via regular mail)

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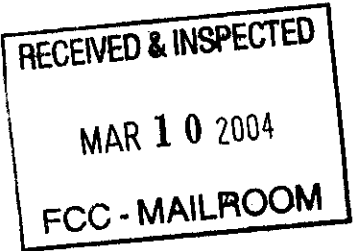
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Before the
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Washington, D.C. 20554



In the Matter of:

The New Jersey Board of Public Utilities)
Petition for Delegated Authority to) CC Docket No.
Implement Wireless Local Number Portability) 95-116

REPLY COMMENTS

The New Jersey Board of Public Utilities ("NJBPUP") hereby submits its reply comments in the above captioned matter.

By petition filed on January 15, 2004, the NJBPUP petitioned the Federal Communications Commission ("FCC") for delegated authority to implement wireless local number portability to New Jersey's Mercer, Atlantic, Cape May and Cumberland County areas, which are outside of - but adjacent to - the top 100 metropolitan statistical areas ("MSAs") in New Jersey.

Wireless local number portability ("LNP"), which became effective on November 24, 2003, enabled consumers to begin both wireless-to-wireless and intermodal porting in the 100 largest MSAs.¹ Thus, consumers in seventeen of New Jersey's twenty-one counties are now able to benefit from LNP.² The NJBPUP is requesting that it be granted the authority to also make wireless LNP available effective immediately for the benefit of the residents of the four other New Jersey's counties listed above.

The NJBPUP is also requesting that henceforth any order or ruling issued by the FCC addressing numbering resource optimization, number portability and/or any other

¹ See *IMO Verizon Wireless Petition for Partial Forbearance from the Commercial Radio Services Number Portability Obligation*, WT Docket No. 01-184, and *Telephone Number Portability*, CC Docket NO. 95-116, Memorandum Opinion and Order, 17 FCC Rcd 14972 (Released July 26, 2002) ("Verizon Wireless LNP Forbearance Order"); *Cellular Telecommunications & Internet Association v. FCC*, No. 02-1264 (D.C. Cir. June 6, 2003) (Dismissed in part and denied in part CTIA's appeal of the Commission's decision in the *Verizon Wireless LNP Forbearance Order*); See also *FCC Clears the Way for Local Number Portability Between Wireline and Wireless Carriers*, CC Docket No. 95-116, 2003 WL 22658210 (November 10, 2003 Press Release).

² 2000 U.S. Census, Metropolitan Area Boundaries, Counties and Central Cities, available at www.census.gov/census2000/state/states/nj.html ("2000 U.S. Census Maps").

action affecting the top 100 MSAs include the four above-mentioned counties as part and parcel of the areas to be effected.

Comments in this matter were submitted by the Cellular Telecommunications & Internet Association ("CTIA") and the California Public Utilities Commission and the People of the State of California ("CPUC" or "California"). CTIA submitted comments in opposition to the NJBPU petition. California submitted comments supporting the New Jersey request.

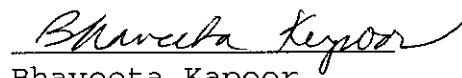
CTIA contends that in light of the national May 24, 2004 deadline which is only three months away, the NJBPU petition to immediately require CMRS providers to port upon approval is untimely. The NJBPU strongly disagrees because LNP is now obligatory in seventeen New Jersey counties and the technology is now available to pool and port in all twenty-one of New Jersey's counties, these carriers have the capability today and should not deny portability to neighboring consumers in Mercer, Atlantic, Cape May and Cumberland Counties. In fact it would be untimely to make these consumers wait until May 24, 2004 given that the facilities needed have been available since November, 2003 and earlier. The NJBPU is not requesting that carriers deploy new facilities where facilities would not otherwise be deployed in the normal course of business. Simply stated, where facilities are already in place consumers should not be denied wireless portability simply because that area is not included in the top 100 MSAs.

To address the situation we face, where facilities are available today, on December 23, 2003, the NJBPU requested that CMRS providers on a voluntary basis not deny portability to requesting customers. Of the six major CMRS providers serving these areas, some agreed to provide portability early on a voluntary basis and some did not agree. None of the CMRS providers claimed that it had a facilities impediment or needed to add plant. The CMRS providers that disagreed did so based solely on the fact that they are not legally obligated to provide portability until May 24, 2004. The CMRS providers that agreed to provide early portability, however, will not do so unless the other CMRS providers participate and agree to reciprocate. A grant of delegated authority and a requirement to provide portability immediately in the areas where facilities permit will resolve this situation.

California filed comments in support of New Jersey's request to expand the reach of wireless portability to these four counties each of which are adjacent to a top 100 MSA. The CPUC goes on to conclude that the New Jersey petition sets forth a narrow set of circumstances which justifies its request.

In light of the above, the NJBPU again submits that the four New Jersey areas can be served with little or no additional burdens placed on carriers. The latest North American Numbering Plan Administration's ("NANPA") Numbering Resources Utilization and Forecast ("NRUF") utilization reports show that there are a significant number of consumers currently availing themselves of cellular services in these areas. The NJBPU is of the view that these consumers should not be denied the benefits of increased competition. NANPA records also show that the six major CMRS providers are present in these areas and any objections or refusals to port in these areas would only serve to delay or obstruct open competition in these markets. Therefore, the NJBPU respectfully requests that it be delegated the authority to require LNP in these areas effective immediately upon approval of this Petition. The NJBPU also requests that henceforth any ruling or order issued by the FCC affecting New Jersey MSAs in the top 100 MSAs include Mercer, Atlantic, Cape May and Cumberland Counties.

Respectfully submitted,



Bhaveeta Kapoor
Deputy Attorney General

Dated: March 9, 2004